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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/728,447	12/04/2003	Mark James Beckman	PA1.677	9366

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EXAMINER	
KUMAR, RAKESH	

ART UNIT	PAPER NUMBER
3651	

MAIL DATE	DELIVERY MODE
06/16/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/728,447	BECKMAN, MARK JAMES	
	Examiner	Art Unit	
	RAKESH KUMAR	3651	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *06 April 2009*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-12,21-28 and 32* is/are pending in the application.

4a) Of the above claim(s) *13-20 and 29-31* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-6,25 and 32* is/are rejected.

7)☒ Claim(s) *7-12,21-24 and 26-28* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *04 December 2003* is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

Final Rejection

Priority

The later-filed application must be an application for a patent for an invention which is also disclosed in the prior application (the parent or original nonprovisional application or provisional application). The disclosure of the invention in the parent application and in the later-filed application must be sufficient to comply with the requirements of the first paragraph of 35 U.S.C. 112. See *Transco Products, Inc. v. Performance Contracting, Inc.*, 38 F.3d 551, 32 USPQ2d 1077 (Fed. Cir. 1994).

The disclosure of the prior-filed application, Application No. 09/301,868 fails to provide adequate support or enablement in the manner provided by the first paragraph of 35 U.S.C. 112 for one or more claims of this application. The claimed invention is not the same invention that is cited in the claimed prior-filed application. Therefore application priority is not extended to the requested date. It is to be noted applicant's election of Species 1 as filed 03/08/2007 comprising Figures 1-3 and Figure 8-10 are not disclosed or taught fairly in the prior-filed application.

The disclosure of the prior-filed application, Application No. 11/044,811 fails to provide adequate support or enablement in the manner provided by the first paragraph of 35 U.S.C. 112 for one or more claims of this application. The claimed invention is not the same invention that is cited in the claimed prior-filed application. Therefore

application priority is not extended to the requested date. It is to be noted applicant's election of Species 1 as filed 03/08/2007 comprising Figures 1-3 and Figure 8-10 are not disclosed or taught fairly in the prior-filed application.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-6, 25 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kaufman (US 6,247,612).

Referring to claims 1,3,4,25 and 32. Kaufman discloses a process for the assembly and the dispensing of a refrigerated beverage container wherein,

transporting filled and capped beverage containers (Figure 5) and preconfigured products to a site of said vending machine for the purpose of performing maintenance function (loading the containers) of said vending machine (Col. 4 line 65-Col. 5 line 10); and,

performing maintenance function including the replenishment (loading the containers) of said vending machine internal storage rack compartments (30) with said

combination of beverage and article (shirts; Figure 6) configured assembled as a unit (Col. 4 line 65-Col. 5 line 10);

replenishment comprising the steps of;

selection of said filled beverage container and said preconfigured article (shirt; Figure 10) as a unit with a retaining device (256; Figure 10) and inserting said unit into an empty product storage rack compartment (see Figure 1); and,

setting a price point (36; Figure 1) for the said product storage rack compartment (30), the contents to be dispensed from said product storage rack compartment (30) to said consumer assessable area (28) for pickup by the consumer upon the condition of the consumer inserting sufficient currency (24) into said vending machine (10) as established by said set price point (36) and entering a selection of the contents (26) of said product storage rack compartment (30) thereby releasing and dispensing into said consumer accessible area (28) said selected stored unit of a combined beverage container and article container thereafter said beverage and article being easily removed from said consumer accessible area (28) as a unit (Figure 10) and thereafter separated by removal of said retainer device (256) by said consumer (Figure 8) for consumption of said beverage and article.

Kaufman does not disclose the container unit as comprising a beverage and a snack product.

It would have been obvious to one of ordinary skill in the art at the time the invention was made, to modify the teachings of Kaufman to replace the free T-shirt

provided along this the beverage container with a snack product because it would provide a greater selection for the consumers.

Regarding to claims 2,5 and 6. See claim rejection 1. Kaufman discloses the number and arrangement of the promotional item loaded in the storage compartment are determined by a person loading the item in to the storage compartment.

It would have been obvious to one of ordinary skill in the art at the time the invention was made, to modify the teachings of Kaufman such that the assembly of the beverage and the promotional items is performed at the site of the vending machine in stead of being preconfigured because the operator would be better able to determine which type of promotional snacks are being consumed at certain vending machine sites.

Claims 7, 10 and 21-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kaufman as applied to claim 1 above, and further in view of Beckman (US 2005/0118309A.)

Regarding to claims 7,10, 25 and 26. Kaufman discloses all claimed limitations of claim 7 however Kaufman does not disclose a limiting disk as a retaining device beverage cap.

Beckman discloses a snack package adapted for a bottle (Figure 7) wherein a retaining device is fabricated of a limiting disk (inside wall of 32 resting above cap 16) and a beverage cap attachment (58) mounted to one side of said limiting disk, limiting

disk positioned to prevent said preconfigured snack from disengagement over said cap (18) until said retaining device is detached from said beverage cap (18).

It would have been obvious to one of ordinary skill in the art at the time the invention was made, to modify the teachings of Kaufman to include a limiting disk engaged over the beverage cap as taught by Beckman because the limiting disk would effectively retain the snack article attached to the beverage container.

Regarding claims 21,22,23 and 24. The vending machine of Kaufman is refrigerated.

Claims 8,9,11,12 and 27-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kaufman in view of Beckman as applied to claim 7 above, and further in view of Singer (US 6,085,919).

Regarding to claims 8,9,11,12 and 27-29. Kaufman in view of Beckman disclose all claimed limitations of claim 8 however, Kaufman in view of Beckman do not disclose the beverage cap attachment comprising a plurality of retaining rings. Singer further discloses flexible fingers (412) used to retain the limiting disk on the bottle.

Singer a beverage cap attachment (411; Figure 7) comprising a plurality of retaining rings (416).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Kaufman in view of Beckman to include plurality of rings disposed of the cap attachment at taught by Singer because the

articles could selectively be assembled and disassembled from the beverage container by the consumer.

Response to Arguments

Applicant should submit an argument under the heading "Remarks" pointing out disagreements with the examiner's contentions. Applicant must also discuss the references applied against the claims, explaining how the claims avoid the references or distinguish from them.

Applicant has claimed priority of Application 09/301,868 and 11/044,811 however upon further review applicant priority date cannot be granted because the elected species by the applicant is not recited in the priority application. The two cited application disclose different invention.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to RAKESH KUMAR whose telephone number is (571) 272-8314. The examiner can normally be reached on M-F 8 AM to 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene Crawford can be reached on (571) 272-6911. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gene Crawford/
Supervisory Patent Examiner, Art Unit 3651

/RAKESH KUMAR/
Examiner, Art Unit 3651